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ORDINANCE NO. 2004-01

AN ORDINANCE REGULATING IMPROPER HANDLING OF FIRE AND OPEN BURNING; ESTABLISHING POWERS OF COUNTY MANAGER, EMERGENCY SERVICES COORDINATOR AND PEACE OFFICERS; ESTABLISHING PROVISIONS FOR DECLARING SEVERE FIRE HAZARD RESTRICTIONS AND FIRE DANGER EMERGENCIES AND AUTHORITY TO MITIGATE; ESTABLISHING PENALTIES; PROVIDING FOR THE SEVERABILITY OF PARTS HEREOF; REPEALING ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the health, safety and general welfare of the residents of the County of Lincoln require the establishment of guidelines for the proper handling of fire and the establishment of a procedure for declaring an extreme fire danger emergency to minimize the risk of loss of life and property within the County from wildfires; and

WHEREAS, the Board of County Commissioners desires to set forth procedures to address prescribed burns and open burns, and to address wildfire risks and mitigation within its jurisdiction when drought conditions exist; and

WHEREAS, NMSA 1978, §§ 4-37-1, *et seq.*, (1975) provides that the Board of County Commissioners may adopt ordinances to discharge those powers necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morale, order, comfort and convenience of the County and its inhabitants.

NOW, THEREFORE, be it enacted by the Board of County Commissioners of the County of Lincoln as follows:

Section 1. *Definitions.*

The following terms are defined for the purpose of this Ordinance:

“*ashes*” means fire residue of any kind, including, but not limited to, fireplace ashes, barbecue grill briquettes, wood chips, wood stove ashes, campfire ashes, hot waste, or other material susceptible of spontaneous combustion;

“ashes, hot” means any ashes that have not been cooled according to the provisions specified herein;

“critical fire weather” shall be defined as a set of weather conditions, usually involving a combination of low relative humidity and high winds, whose effects on fire behavior make control difficult and threaten the health, safety, and welfare of the citizens of Lincoln County;

“emergency services coordinator” shall be the duly appointed person or persons employed or appointed by the County of Lincoln with the authority to enforce the provisions of this Ordinance;

“fire danger emergency” shall mean ongoing and continuing fire conditions consisting of severe drought, critical fire weather, and other fire hazard factors that pose a significant and extended threat to public health, safety, and welfare which require extraordinary action to prevent uncontrolled fires;

“incinerator” shall be defined as an enclosed device using controlled flame combustion, the primary purpose of which is to thermally break down solid waste. A 55-gallon, or larger, drum with appropriate fire-resistive screen shall be considered an approved incinerator;

“open burning” is burning which is conducted out of doors and is not enclosed in an incinerator. This includes burning of refuse in piles or backyard burn barrels, yard waste and weed burning, prescribed burning of forest and rangeland, and other types of outdoor burning;

“recreational burning” shall mean any open-air fire, started through any means, utilizing any fuel source, and shall include campfires, bonfires, and the like, where people gather for warmth, cooking and fellowship;

“severe fire hazard” shall mean an immediate situation consisting of critical fire weather conditions that make fire control difficult and pose a real and present threat to public health, safety, and welfare for a limited time period; and

“wildlands” means any lands covered wholly or in part by timber, brush, or native grass.

Section 2. *Jurisdiction.*

The regulations contained within this Ordinance shall apply to all land area within the unincorporated area of the County of Lincoln.

Section 3. *Improper handling of fire.*

- A. It shall be unlawful to leave, or cause or permit to be left, any fire unattended by any person. Before leaving any fire, such persons in charge of such fire shall thoroughly

extinguish same by completely covering it with dirt, saturating it with water, or otherwise treating it in such a manner to prevent any rekindling of such fire.

- B. It shall be unlawful for any person to allow fire to escape or spread from the control of the person setting such fire or having charge thereof, without using reasonable and proper precaution to prevent such fire from escaping or spreading.
- C. It shall be unlawful for any person to cause a fire to be started upon his own land or the land of another person by means of any lighted cigar, cigarette, pipe, match, or other manner, and leave such fire unquenched. In addition, it shall be unlawful for any person to throw hot or burning substances, or objects such as cigars, cigarettes, papers, matches, and ashes, or the contents of a burning pipe, from windows and doors from any building, or public place, or from any moving vehicle, or upon any material or condition which is combustible or liable to damage by heat, fire or explosion.
- D. Disposal of ashes.
 - (1) It is unlawful to dispose of hot ashes in any manner.
 - (2) Hot ashes may become cold ashes and subject to disposal as provided in Ordinance No. 2003-02, Solid Waste Management, by:
 - (a) cooling in place for a minimum of 48 hours and inspection to determine that no live embers capable of spontaneous combustion are present; or
 - (b) extinguishment with water or sand and stirring to the point where inspection reveals that no embers capable of spontaneous combustion are present.
 - (c) Cold ashes shall be placed in a bag or other enclosed container before placing in a dumpster.

Section 4. ***Open burning.***

- A. No person shall set fire or cause or procure a fire to be set to any trash, refuse, garbage, or solid waste unless in an approved incinerator.
- B. Other than the exemptions listed in subsection D, below, it is a violation of this Ordinance for any person to ignite, cause to be ignited, permit to be ignited or suffer, allow, or maintain any open fire unless and until the Lincoln County Sheriff's Department has been notified.
- C. **Notification of intended burn.** Prior to any such restricted open burn, a person shall be required to provide advance notice, within twenty-four (24) hours, of any such intended

burn to the Lincoln County Sheriff's Department, by telephone, of the exact location of same. Notification shall be given by each such person prior to each anticipated day of burning.

D. **Unrestricted open burning.** Open burning is permitted for:

- (1) recreational;
- (2) ceremonial purposes;
- (3) barbecuing;
- (4) for heating purposes in fireplaces;
- (5) for noncommercial cooking of food for human consumption; and
- (6) for warming by small wood fires at construction sites.

Any such unrestricted open burn shall be thoroughly extinguished by completely covering it with dirt, saturating it with water, or otherwise treating it in such a manner to prevent rekindling of such fire. Nothing herein shall be interpreted so as to prohibit the burning of smudge pots, or other means utilized by agricultural interests to prevent freeze damage to crops.

E. **Restricted open burning.** Other than the exceptions listed in Section 4D, above, all burns shall be conducted only when sustained winds are less than 10 miles per hour, unless an emergency condition exists, such as fires set to abate a fire hazard or a backfire set for the purpose of stopping a fire actually burning.

Section 5. *Critical fire weather conditions.*

A. **Severe fire hazard restriction.** The County Manager or Emergency Services Coordinator may declare that critical fire weather conditions exist which are favorable to the ignition and rapid spread of uncontrolled fire. Upon such determination, the County Manager or Emergency Services Coordinator may impose a temporary restriction on all open burning, permitted or otherwise, except as set forth in Section 4D, (2) through (6), until such time as the critical fire weather has abated and the fire hazard reduced.

B. **Fire danger emergency.** The Board of County Commissioners, upon recommendation of the County Manager or Emergency Services Coordinator, may, during declared periods of extreme drought, ongoing critical fire weather, or any combination of conditions that pose a significant and continuing risk of uncontrolled fire, declare a fire danger emergency and prohibit all open fires within the county, except as set forth in Section 4D, (2) through (6) and unless a burn permit has been issued by the County of Lincoln. The Emergency Services Coordinator or any authorized peace officer shall enforce the prohibition during the period in which the declaration is in effect. Upon determination that the fire danger has abated, the Board of County Commissioners shall lift the prohibition.

- C. **Authority to mitigate.** When critical fire weather conditions exist and any fire is sighted, the County Manager, Emergency Services Coordinator, or any authorized peace officer may enter upon private land without a warrant for the sole purpose of determining whether a fire emergency exists. If, in the determination of the County Manager, Emergency Services Coordinator, or authorized peace officer, that conditions observed upon private land pose a real and present risk of uncontrolled fire, appropriate action may be taken to extinguish, suppress, or otherwise mitigate the immediate risk. A reasonable attempt to contact the home owner will be made, unless the health, safety, and welfare of the citizens of Lincoln County may be compromised.

Section 6. ***Enforcement.***

For the purpose of enforcing this Ordinance and all Orders of the Board of County Commissioners of the County of Lincoln and the laws of the State of New Mexico pertaining to the prevention of fires and protection of the unincorporated area of the county from fire, the Lincoln County Sheriff and his duly authorized agents shall be the chief enforcement officers of this Ordinance. When critical fire weather conditions exist, the County Manager, Emergency Services Coordinator, or any authorized peace officer may order an individual to cease and desist. Failure to comply with a directive to cease and desist when a severe fire hazard or fire danger emergency has been declared shall constitute a distinct hazard to life or property and a citation may be issued.

Section 7. ***Violations and penalties.***

Any person who shall violate any of the provisions of this Ordinance or shall fail to comply therewith, or shall violate or fail to comply with any order made thereunder found guilty by a court of competent jurisdiction shall be guilty of a misdemeanor punishable by a fine not to exceed three hundred dollars (\$300.00) or by imprisonment for not more than ninety (90) days or by both such fine and imprisonment. Each day this Ordinance is violated shall be considered a separate offense. Notwithstanding any of the foregoing, in the event any person damages property, whether public or private, or causes injury to any person, and such damage or injury is found to have been an element of the violation of any provision of this Ordinance, the District Court or Magistrate Court may, at its discretion, require the defendant to make restitution within a reasonable time, to the victims of said damage or injury. Nothing in this Ordinance shall prohibit a person from being charged under NMSA 1978, § 19-6-1, *et seq.* or § 30-17-1, *et. seq.*, or federal laws relating to improper handling of fire.

Section 8. ***Severability clause.***

It is hereby declared to be the intention of the Board of County Commissioners that the sections, paragraphs, sentences, clauses and phrases of this Ordinance shall be deemed severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance is declared unconstitutional or otherwise invalid

by the valid judgment of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections hereof.

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Section 9. *Conflict.*

Ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 10. *Effective date and repeal.*

This Ordinance shall take effect thirty days after being recorded in the Public Records of Lincoln County, New Mexico, at which time Ordinance No. 2003-07 shall be repealed.

ADOPTED this 22nd day of January, 2004.

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